



Commission Staff Report To Facilities Committee

DATE: April 28, 2016

COMMISSION MEETING DATE: May 26, 2016

SUBJECT: Black & Veatch Corporation – Five Year Multi-Task Professional Services Agreement; Applicable to the following projects: All NCPA Facility Locations, Members, SCPPA, and SCPPA Members

AGENDA CATEGORY: Consent

<p>FROM: Ken Speer Assistant General Manager</p> <p>Division: Generation Services</p>	<p>METHOD OF SELECTION:</p> <p>N/A</p>
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IMPACTED MEMBERS:		
<p>All Members <input checked="" type="checkbox"/></p> <p>Alameda Municipal Power <input type="checkbox"/></p> <p>Bay Area Rapid Transit <input type="checkbox"/></p> <p>City of Biggs <input type="checkbox"/></p> <p>City of Gridley <input type="checkbox"/></p> <p>City of Healdsburg <input type="checkbox"/></p>	<p>City of Lodi <input type="checkbox"/></p> <p>City of Lompoc <input type="checkbox"/></p> <p>City of Palo Alto <input type="checkbox"/></p> <p>City of Redding <input type="checkbox"/></p> <p>City of Roseville <input type="checkbox"/></p> <p>City of Santa Clara <input type="checkbox"/></p>	<p>City of Ukiah <input type="checkbox"/></p> <p>Plumas-Sierra REC <input type="checkbox"/></p> <p>Port of Oakland <input type="checkbox"/></p> <p>Truckee Donner PUD <input type="checkbox"/></p> <p>Other <input type="checkbox"/></p>
<p><i>If other, please specify.</i></p> <hr style="width: 20%; margin-left: auto;"/> <hr style="width: 20%; margin-left: auto;"/>		
<p><i>Place an X in the box next to the applicable Member(s) above.</i></p>		

RECOMMENDATION:

Approval of Resolution 16-XX authorizing the General Manager or his designee to enter into a Multi-Task Professional Services Agreement with Black & Veatch Corporation with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years for use at all facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA members.

BACKGROUND:

Various professional services are required from time to time related to project support and plant operations at all facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority (“SCPPA”), or by SCPPA members. Black & Veatch Corporation is a provider of these services.

On December 3, 2015 the NCPA Commission approved an enabling agreement between NCPA and Black & Veatch Corporation for services to be provided at the NCPA Lodi Energy Center facility only. That agreement was executed as of December 11, 2015. If this proposed agreement with Black & Veatch Corporation for use at all facilities is approved and executed, the existing agreement dated December 11, 2015 for use at LEC only will be cancelled.

FISCAL IMPACT:

Upon execution, the total cost of the agreement is not-to-exceed \$1,500,000 over five years to be used out of NCPA approved budgets as services are rendered. Purchase orders referencing the terms and conditions of the Agreement will be issued following NCPA procurement policies and procedures.

SELECTION PROCESS:

This enabling agreement does not commit NCPA to any expenditure of funds. At the time services are required, NCPA will bid the specific scope of work consistent with NCPA procurement policies and procedures. NCPA currently has in place one other enabling agreement for similar services and seeks bids from as many qualified providers as possible. Bids are awarded to the lowest cost provider. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required.

ENVIRONMENTAL ANALYSIS:

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a “project” for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

COMMITTEE REVIEW:

The recommendation above was reviewed by the Facilities Committee *(on May 4, 2016 and was recommended for Commission approval.) For Facilities Committee meetings where a quorum was not present:* No formal action was taken due to the lack of a quorum, however, the Project participants present at the meeting voiced their support for the recommendation below and no other meeting attendees had any objections.

The recommendation above was reviewed by the Lodi Energy Center Participant Committee on *(May 9, 2016 and was recommended for Commission approval.)*

Respectfully submitted,

RANDY S. HOWARD
General Manager

Attachments (2):

- Resolution
- Multi-Task Professional Services Agreement with Black & Veatch Corporation

RESOLUTION 16-XX

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY
APPROVING A MULTI-TASK PROFESSIONAL SERVICES AGREEMENT WITH
BLACK & VEATCH CORPORATION**

(reference Staff Report #xxx:16)

WHEREAS, various professional services are required from time to time related to project support and plant operations at all facilities owned and/or operated by the Northern California Power Agency (NCPA), its members, by the Southern California Public Power Authority (SCPPA), or by SCPPA members; and

WHEREAS, Black & Veatch Corporation is a provider of these services; and

WHEREAS, on _____, 2016, the LEC Project Participant Committee approved the agreement with Black & Veatch Corporation in an amount not-to-exceed \$1,500,000 over five years; and

WHEREAS, this activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manger or his designee to enter into a Multi-Task Professional Services Agreement with Black & Veatch Corporation, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$1,500,000 over five years for consulting services related to project support and plant operations at all facilities owned and/or operated by NCPA, its members, by the Southern California Public Power Authority (SCPPA), or by SCPPA members.

PASSED, ADOPTED and APPROVED this _____ day of _____, 2016 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

CAROL GARCIA
CHAIRPERSON

ATTEST: _____
CARY A. PADGETT
ASSISTANT SECRETARY



**MULTI-TASK
PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE NORTHERN CALIFORNIA POWER AGENCY AND
BLACK & VEATCH CORPORATION**

This agreement for professional services (this "Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and Black & Veatch Corporation, a corporation with its office located at 11401 Lamar, Overland Park, KS 66211 ("Consultant") (together sometimes referred to as the "Parties") as of _____, 2015 ("Effective Date") in Roseville, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the range of services described in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Services"), at the time and place and in the manner specified in a Purchase Order or other written authorization.

- 1.1 **Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) years from the date this Agreement was signed by Agency, whichever is shorter.
- 1.2 **Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.

As used in this Section 1.2, "Warranty Period" means one (1) calendar year following completion of the Services, except that with regard to design, "Warranty Period" means one (1) calendar year following Substantial Completion of the related project; provided, however, that in no event will the Warranty Period extend beyond four years from Consultant's completion of the Services. "Substantial Completion" means the stage in which the progress of a project, or applicable portion thereof, is sufficiently complete such that the Agency can occupy or utilize the project or portion thereof for its intended purpose.

If, during the Warranty Period, it is shown there is an error in the Services caused solely by Consultant's failure to meet the standard of performance in this Section 1.2, and Agency has notified Consultant in writing of any such error within that period, Consultant shall re-perform, at no additional cost to Agency, such Services within the original scope of Services as may be necessary to remedy such error. Re-performed Services shall be warranted for an additional year, not to exceed four years from the completion of the original Services.

If the Services include a technical review of work performed by Agency's contractors or consultants, Consultant shall provide such technical review in order for Agency to have a

greater degree of confidence that such work will conform generally to the contract documents between Agency and Agency's contractors or consultants. Agency's contractors and consultants shall remain solely responsible for the quality of the work that Consultant reviews, and Consultant's review shall not be deemed to be a warranty or guarantee from Consultant regarding the quality of the work reviewed. Agency agrees that its exclusive remedy for defective work by others that is reviewed by Consultant shall be from Agency's contractors and consultants who performed the work.

Consultant shall have no liability for defects in the Services attributable to Consultant's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by Agency or third parties not under contract to Consultant (collectively, "Third Party Information"); provided, however, that (1) this provision shall not excuse Consultant's failure to perform the Services to the standard of care in this Section 1.2, and (2) where the scope of services includes checking or verifying the accuracy of Third Party Information, this provision shall not excuse Consultant from performing such checking or verifying to the standard of care in this Section 1.2.

The obligations and representations contained in this Section 1.2 are Consultant's sole warranty and guarantee obligations and Agency's exclusive remedy in respect of quality of the Services. EXCEPT AS PROVIDED IN THIS ARTICLE, CONSULTANT MAKES NO OTHER WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This Section 1.2 governs, modifies, and supersedes any other terms in this Agreement which may be construed to address warranties or guarantees or the quality of the Services.

- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.4 **Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members ("Members").
- 1.5 **Request for Services.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have fourteen (14) days from the date of the Agency's issuance of the

Purchase Order in which to respond in writing whether Consultant chooses to perform the Requested Services. If Consultant fails to respond within such time and agree to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement, and its Exhibits, the Purchase Order is deemed rejected and Agency shall not be bound by the Purchase Order issued to Consultant.

Section 2. COMPENSATION. Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED ONE MILLION FIVE HUNDRED THOUSAND** dollars (\$1,500,000) for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Services performed;
- The Purchase Order number authorizing the Services;
- At Agency's option, the total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder; and
- At Agency's option, when Consultant's Scope of Work identifies tasks, for each work item in each task, a copy of the applicable time entries showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction.

Invoices shall be sent to:

Northern California Power Agency
651 Commerce Drive
Roseville, California 95678
Attn: Accounts Payable

2.2 **Monthly Payment.** Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 **Payment of Taxes.** Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.

- 2.4 **Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of written authorization from the Contract Administrator.
- 2.5 **Timing for Submittal of Final Invoice.** Consultant shall have ninety (90) days after completion of its Services to submit its final invoice. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for the period covered by this Agreement.

- 4.1 **Workers' Compensation.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant with limits of one million dollars (\$1,000,000.00) per accident.

4.2 **Commercial General and Automobile Liability Insurance.**

4.2.1 **Commercial General Insurance.** Consultant shall maintain commercial general liability insurance for the term of this Agreement, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations of Consultant. The policy shall provide a limit of \$1,000,000 per occurrence/\$2,000,000 aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering General Liability, with a self-insured retention or deductible of no more than \$100,000. No endorsement shall be attached limiting the coverage.

4.2.2 **Automobile Liability.** Consultant shall maintain automobile liability insurance form CA 0001 (current edition) for the term of this Agreement covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle (symbol 1), whether or not owned by the Consultant, on or off Agency premises. The policy shall provide a limit of \$1,000,000 per each accident, with a self-insured retention or deductible of no more than \$100,000. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

4.2.3 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

4.3 **Professional Liability Insurance.** Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing work in connection with this Agreement in an amount of one million dollars (\$1,000,000.00) and two million dollars (\$2,000,000) aggregate covering the Consultant's errors and omissions. Any deductible or self-insured retention shall not exceed two hundred fifty thousand dollars (\$250,000) per claim. Such insurance shall be on an "occurrence" basis, except that Consultant may maintain such insurance on a "claims-made" basis, subject to the following conditions: (1) the retroactive date of the policy shall be on or before the Effective Date of this Agreement; (2) the policy shall be maintained for at least five (5) years after completion of the Services and, if requested by Agency, evidence of coverage shall be provided during this period; and (3) if, within five (5) years of completion of the Services, coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Agreement, Consultant shall purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Services.

4.4 **All Policies Requirements.**

4.4.1 **Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) policy endorsements to the policies referenced in Section 4.2, adding the Agency as an additional insured and declaring such insurance primary in regard to work performed pursuant to this Agreement.

4.4.2 **Notice of Reduction in or Cancellation of Coverage.** Consultant shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

4.4.3 [Intentionally left blank.]

4.4.4 **Additional Certificates and Endorsements.** If Consultant provides services to Agency members, SCPPA and/or SCPPA members, Agency shall have the right to require the Consultant to provide certificates of insurance and/or policy endorsements, as referenced in Section 4.4.1, naming the specific Agency member, SCPPA or Agency member for which the Services are to be performed.

4.5 **Waiver of Subrogation.** Consultant agrees to waive subrogation which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant

agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Agency for all work performed by Consultant, its employees, agents and subcontractors.

- 4.6 **Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Services are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Consultant shall also ensure that all workers involved in the provision of Services are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

- 5.1 **Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.2 **Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all third party claims for bodily injury (including death) or property damage to the extent arising out of the negligence, recklessness or willful misconduct of the Consultant in its performance of Services under this Agreement. For the avoidance of doubt, claims of an employee of Agency or Consultant are deemed third party claims. Consultant shall bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence or willful misconduct of the Agency.

For the avoidance of doubt, this Section 5.2 shall not affect direct claims or actions (including, but not limited to, claims for property damage) by Agency against Consultant.

- 5.3 **Limitation of Liability.** Having considered the risks and potential liabilities that may arise out of the Services, the benefits of the Services, and in specific consideration of the promises contained in this Agreement and other valuable consideration, receipt of which is acknowledged, Agency and Consultant allocate and limit such liabilities in accordance with

this Section 5.3. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law:

In no event shall Consultant be liable to Agency for any loss of profits or revenue; loss of use; loss of opportunity; loss of goodwill; cost of substitute facilities, goods or services; cost of capital; cost of replacement power; governmental and regulatory sanctions (other than sanctions imposed on Consultant by governmental and regulatory agencies); and claims of customers for such damages; or for any special, consequential, incidental, indirect, punitive, or exemplary damages in any way arising from or related to the performance of this Agreement;

The total cumulative liability of Consultant and any entity owned by, owning, controlled by, controlling or under common control of Consultant to Agency for all claims, losses, damages, and expenses in any way arising from or related to the performance of this Agreement shall not be greater than Two Million Dollars (\$2,000,000).

Releases, waivers and limitations expressed in this Agreement concerning liability and remedies shall apply even in the event of the fault, tort (including negligence), strict liability, breach of contractor warranty, or other basis of liability of the Party released or whose liability is limited or against whom remedies have been limited and shall extend to the officers, directors, partners, employees, licensors, agents, subcontractors, vendors and related entities of such Party.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing

the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

Consultant shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Consultant's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Consultant agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Consultant.

- 6.2 **Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 **Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 **Certification as to California Energy Commission.** If requested by the Agency, Consultant shall, at the same time it executes this Agreement, execute Exhibit C.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Consultant.

In the event of termination, Consultant shall be entitled to compensation for Services satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

- 8.2 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.

- 8.3 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant shall survive the termination of this Agreement.

- 8.4 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include the following:

8.4.1 Immediately terminate the Agreement;

8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement that Agency has paid for, or for which Agency pays pursuant to a final invoice;

8.4.3 Retain a different consultant to complete the Services not finished by Consultant; and/or

8.4.4 Charge Consultant the difference between the costs to complete the Services that is unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications,

records, files, or any other documents or materials, in electronic or any other form, that Consultant is required to deliver to Agency as a deliverable under this Agreement shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents. Nothing contained in this Section shall be construed as limiting or depriving Consultant of its rights to use its basic knowledge and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the work to be performed pursuant to this Agreement.

9.2 Consultant's Books and Records. Consultant shall maintain any and all records or other documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under the Agreement.

9.4 Confidential Information and Disclosure.

9.4.1 Confidential Information. The term "Confidential Information", as used herein, shall mean any and all confidential, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information. Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as confidential Information in accordance with this section.

9.4.2 Non-Disclosure of Confidential Information. During the term of this Agreement, either party may disclose ("The Disclosing Party") confidential Information to the other party ("the Receiving Party"). The Receiving Party: (a) shall hold the Disclosing Party's Confidential Information in confidence; and (b) shall take all

reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

9.4.3 Permitted Disclosure. Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.4.3.2 or 9.4.3.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

9.4.3.1 Disclosure to employees, agents, consultants, contractors, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

9.4.3.2 Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

9.4.3.3 Disclosure by Agency in response to a request pursuant to the California Public Records Act.

9.4.4 Handling of Confidential Information. Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof), if requested by Disclosing Party in writing. Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement: (a) for archival purposes in its computer system; (b) in its legal department files; and (c) in files of Receiving Party's representatives where such copies are necessary to comply with applicable law. Party shall not disclose the Disclosing Party's Information to any person other than those of the Receiving Party's employees, agents, consultants, contractors and subcontractors who have a need to know in connection with this Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

10.2 Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the

state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

- 10.7 **Contract Administrator.** This Agreement shall be administered by Ken Speer, Assistant General Manager, or his/her designee, who shall act as the Agency's representative. All correspondence shall be directed to or through the representative
- 10.8 **Notices.** Any written notice to Consultant shall be sent to:

Black & Veatch Corporation
Attention: Sean Kilgrew
10995 Gold Center Dr. Suite 100
Rancho Cordova, CA 95670

With copy to:

Black & Veatch Corporation
Attention: Carlos Araoz
10995 Gold Center Dr. Suite 100
Rancho Cordova, CA 95670

Any written notice to Agency shall be sent to:

Randy S. Howard
General Manager
Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

With a copy to:

Michael F. Dean
General Counsel
Northern California Power Agency
Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814

- 10.9 **Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.10 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 10.11 **Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:
- 10.11.1 Each party shall designate a senior management or executive level representative to negotiate any dispute;
 - 10.11.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.
 - 10.11.3 If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.

- 10.11.4 The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.11.5 The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 10.11.6 The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 10.12 **Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto, a Purchase Order, or the Consultant's Proposal, the Exhibits shall control.
- 10.13 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 10.14 **Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 10.15 **No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Consultant provide services to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this Section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.

Section 11. SAFETY AND HAZARDOUS MATERIALS.

- 11.1 **Safety and Environmental Regulations.** Consultant shall be responsible for the safety of its own employees at all times during the performance of any Services. Consultant's safety program shall include all requisite components required under Federal, state and local regulations, and shall comply with all Agency or project site programs, if applicable.
- 11.1.1 Consultant shall not have control or charge of and shall not be responsible for: construction means, methods, techniques, sequences, or procedures of construction; the acts or omissions of Agency's contractors, vendors or suppliers; or the safety or environmental precautions and programs in connection with the work performed by Agency's contractors, vendors or

suppliers; provided, however, that this Section 11.1.1 shall not apply where the Services specified in a Purchase Order specifically include these responsibilities.

11.1.2 Consultant shall not be responsible for the adequacy or completeness of any other entity's safety or environmental programs, procedures, or precautions at the job site, and Consultant shall not have the authority to stop such other entity's work; provided, however, that this Section 11.1.2 shall not apply where the Services specified in a Purchase Order specifically include such responsibilities.

11.2 **Pre-Existing Contamination.** "Hazardous Waste" means any toxic or radioactive substance so defined under applicable federal, state or local laws or regulations. "Pre-Existing Contamination" is any Hazardous Waste present at the job site that was not brought onto such site by Consultant or at the direction of Consultant. Notwithstanding anything in this Agreement to the contrary, title to, ownership of, and legal responsibility and liability for Pre-Existing Contamination shall at all times remain with Agency. Agency agrees to release, defend, indemnify, and hold Consultant harmless from and against any and all liability and claims, including attorneys' fees, that may in any manner arise in any way directly or indirectly from such Pre-Existing Contamination.

Agency shall, at Agency's sole expense and risk, arrange for handling, storage, transportation, treatment, and delivery for disposal of Pre-Existing Contamination. Agency shall be solely responsible for obtaining a disposal site for Pre-Existing Contamination. Agency shall look to the disposal facility and transporter for any responsibility or liability arising from improper disposal or transportation of Pre-Existing Contamination. Consultant shall not have or exert any control over Agency in Agency's obligations or responsibilities as a generator in the storage, transportation, treatment, or disposal of any Pre-Existing Contamination. Agency shall complete and execute any forms or certificates relating to regulated activities, including generation, storage, handling, treatment, transportation, or disposal of Pre-Existing Contamination. In the event that Consultant executes or completes any such forms or certificates, Consultant shall be, and be deemed to have acted as, Agency's agent.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

BLACK & VEATCH CORPORATION

Date _____

Date _____

RANDY S. HOWARD, General Manager

JON R. FEICKERT,
Power Generation Services Director

Attest:

Assistant Secretary of the Commission

Approved as to Form:

Assistant General Counsel

EXHIBIT A

SCOPE OF SERVICES

Black & Veatch Corporation ("Consultant") shall provide the Northern California Power Agency ("Agency") and, pursuant to Section 1.4 of the Agreement, Agency members, the Southern California Public Power Authority ("SCPPA"), and SCPPA members, with consulting services related to project support and plant operations as needed.

Services to include, but not be limited to the following:

- Feasibility Studies
- Business Model Development
- Conceptual Design
- Cost Estimating
- Contract Planning
- Engineering Services (preliminary and detailed)
- Engineering Studies
- Execution Planning
- Operations and Maintenance Evaluation and Support
- Vendor Quality Assurance
- Construction Management
- Start-up and Commissioning Service
- Customer Information System Services
- Meter Data Management System Services
- Advanced Metering Infrastructure Services
- Smart Grid Solutions
- Technology Advisory Services
- Project Management Services
- Smart Grid Consulting Services

EXHIBIT B

COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed the amount set forth in Section 2 of this Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

HOURLY BILLING RATES (see Client Billings and Notes)	
Title/Description/Hourly Billing Rate (\$USD)	
Project Administration	
Project accounting and office support including clerical, secretarial and billing.	
Project Administration	\$77.00
Technicians and Technical Support	
Technical designers, drafters, and other technical support functions.	
Associate Technician / Designer	\$89.00
Staff Technician / Designer	\$111.00
Lead Technician/Designer	\$140.00
Senior Technician/Designer	\$182.00
Engineering and Management	
Engineering design, analysis, and management. Includes departmental and project assignments including project management, executives and engineering department management.	
Associate Engineers	\$99.00
Staff Engineers	\$120.00
Design Engineers	\$141.00
Project Engineers	\$168.00
Senior Engineers	\$199.00
Engineering Managers	\$215.00
Project Managers	\$225.00
Senior Project Managers	\$253.00
Executives	\$276.00
Estimating, Project Controls and Procurement	
Professionals who assess the cost related to projects, track the cost associated with a project, and perform planning and scheduling functions related to projects. These professionals also provide procurement support activities.	
Staff Professional	\$118.00
Lead Professional	\$148.00
Senior Professional	\$230.00
Specialized Staff	
Specialist staff such as scientists, geologists, environmental consultants, lawyers, equipment or technology experts, and construction specialists.	
Associate Specialist	\$92.00
Specialist	\$118.00
Lead Specialist	\$164.00
Senior Specialist	\$220.00

Client Billings: Client shall pay to Engineer for the performance of the Services the sum of the following amounts unless the compensation is otherwise stated in the specific task assignment.

1. Labor cost will be billed as actual hours charged to this project by Black & Veatch personnel and in accordance with the rates above.
2. Typical and customary home office expenses, including computer related expenses (network server charges, PC usage charges, software and design application charges, printing, plotting, and server storage), reprographic services, document production, fax, telephone, postage/courier, etc. will be billed at a rate of \$8.00 per hour of direct billed labor.
3. Expenses for travel and lodging will be billed at actual cost. These expenses include cost such as air-fare, personal mileage, lodging, meals, motor vehicles rental, telephone, special rental equipment, etc.
4. Cost of 3rd party services and for non-customary office costs such as production printing will be billed at actual cost plus 10%.
5. Field assignments of longer than 60 days will be billed as actual hours charged to this project by Black & Veatch personnel in accordance with the rate sheet plus uplift as determined by current field services policy. Expenses for field assignments can be per diem, actual expenses, or a combination of both as specific to the assignment.
6. Overtime applies only to non-exempt personnel as defined by the US Federal Wage and Hour Law. Overtime will be billed as actual hours charged to this project by Black & Veatch personnel in accordance with the rate sheet plus 50%.
7. Any other professionals not specifically identified above will be placed in the most appropriate category above based on function and experience.

NOTE: As a public agency, NCPA shall not reimburse Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service.

The rates above are subject to one (1) annual adjustment upon thirty (30) days' prior written notice to Agency.

EXHIBIT C

CERTIFICATION

Affidavit of Compliance for Consultants

I, _____
(Name of person signing affidavit)(Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of

BLACK & VEATCH CORPORATION

for contract work at LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI CA 95242

have been conducted as required by the California Energy Commission Decision for the above-named project.

(Signature of officer or agent)

Dated this _____ day of _____, 20 _____.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.

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